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± Also Admitted to Practice in NJ and PA  
Δ Also Admitted to Practice in MA  
:: Admitted to Practice in Ohio  
† Admission Pending

## MEMO ENDORSED

December 27, 2022

### VIA CM/ECF

Hon. Valerie E. Caproni  
United States District Court  
Southern District of New York  
Thurgood Marshall United State Courthouse  
40 Foley Square  
New York, New York 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 1/6/2023

Re: *The Estate of Eleanor H. Brown, by her Proposed Administrator, Angela Hickson v. Terence Cardinal Cooke Health Care Center*  
Case No. 1:22-cv-10670-VEC

Dear Judge Caproni:

The undersigned represents defendant TERENCE CARDINAL COOKE HEALTH CARE CENTER (“Defendant”) in the above-referenced action. Through this letter, Defendant respectfully asks the Court to stay this matter and hold anticipated motion practice and/or consideration of remand in abeyance until after the appeals of *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.), *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164, and *Solomon v. St. Joseph Hospital*, No. 21-2729, currently pending in the Second Circuit, are decided.

The anticipated motion practice in this matter includes a pre-answer motion to dismiss based upon Plaintiff’s lack of capacity to prosecute this action as a “Proposed” estate representative, and the COVID-19 immunities afforded by the Public Readiness and Emergency Preparedness Act (“PREP Act”), 42 U.S.C. §§ 247d-6d, 247d-6e, and New York’s Emergency or Disaster Treatment Protection Act (“EDTPA”), N.Y. Pub. Health Law § 3082. Defendant anticipates that Plaintiff will also move to remand this action to state court.

As a threshold matter, Plaintiff as “Proposed Administrator” of the decedent’s estate lacks standing, and thus lacks capacity to prosecute this action or otherwise act on behalf of the decedent. See NY EPTL §5-4.1(1); *Bush v. City of Utica*, 948 F.Supp.2d 246, 253 (N.D.N.Y. 2013), *aff’d sub nom. Bush v. City of Utica*, N.Y., 558 F.App’x 131 (2d Cir. 2014); *Carrick v. Central General Hospital*, 51 N.Y.2d 242, 246 (1980); *Sam Kyung Cho v. Yongshin Cho*, 45 A.D.3d 388, 389 (1st Dep’t 2007); *Butler v. Kings Co. Hospital Center*, 30 Misc.3d 1229(a), 924 N.Y.S.2d 307 (Sup. Ct. Kings County 2011) (dismissing wrongful death claim where “Proposed Administrator” subsequently obtained letters, but never cured initial filing defect). Defendant intends to file a pre-answer motion to dismiss on these grounds because

Plaintiff lacks the capacity to take any step on behalf of the state. As such, Plaintiff cannot oppose dismissal or move to remand. Therefore, dismissal for lack of capacity is warranted, or alternatively, a stay of proceedings until after an administrator is properly appointed.

Defendant removed this action because Plaintiff's Complaint alleges injury relating to the administration of COVID-19 countermeasures to prevent, diagnose and/or treat COVID-19 within the meaning of the PREP Act. Defendant asserts federal subject matter jurisdiction on the grounds that these claims: (1) "aris[e] under" federal law within the meaning of 28 U.S.C. § 1331 because they are completely preempted by the PREP Act; (2) "aris[e] under" federal law within the meaning of 28 U.S.C. § 1331 because, under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), these claims necessarily involve substantial and disputed questions of federal law; and (3) form the basis for federal jurisdiction because defendants subject to such claims are persons acting under federal officers within the meaning of 28 U.S.C. § 1442(a)(1). These issues are before the Second Circuit in the *Leroy* and *Rivera-Zayas* appeals; oral argument occurred on October 31, 2022. On November 14, 2022, the Second Circuit ordered that consideration of these appeals be held in abeyance until the Court issues a decision in *Solomon*. Briefing in *Solomon* on the same jurisdictional questions at issue in this case and in *Leroy* and *Rivera-Zayas* is currently scheduled to conclude by the end of January 2023. A stay would allow the parties the benefit of awaiting a decision from the Second Circuit before engaging in motion practice that could be deemed moot. As such, Defendant respectfully asks this Court to hold any consideration of remand in abeyance until after the Second Circuit renders decisions in these appeals.

Multiple courts in the Southern and Eastern Districts of New York have increasingly stayed motion practice, despite objection by plaintiffs, in similarly situated cases as a matter of judicial efficiency. As E.D.N.Y. Judge Vitaliano recognized in issuing a stay in a case involving identical jurisdictional issues, "a court may...properly exercise its staying power when a higher court is close to settling an important issue of law bearing on the action." *See McGovern v. Our Lady of Consolation Geriatric Care Center*, 2:22-cv-05558-ENV (E.D.N.Y., Sep 29, 2022) (issuing stay pending Second Circuit's resolution of *Leroy* and *Rivera-Zayas* appeals) (citation omitted).

Numerous other courts have similarly ruled. *See, e.g., Cruz v. St. Vincent de Paul Residence, et al.*, 1:22-cv-10515-JGK (S.D.N.Y., Dec. 23, 2022) (staying case pending decisions by Second Circuit); *The Estate of Shirley Brito v. Harlem Center for Nursing and Rehabilitation, LLC et al.*, 1:22-cv-09937-PAE (S.D.N.Y., Dec. 14, 2022) (staying case in light of Second Circuit's pending resolution of appeals, "which address issues central to this Court's jurisdiction."); *Ortiz v. Bronx Harbor Heath Care Complex, Inc., et al.*, 1:22-cv-09348-JLR (S.D.N.Y., Nov. 8, 2022) (staying motion practice until resolution of *Leroy* and *Rivera-Zayas* appeals "which may bear on whether this Court has subject-matter jurisdiction over this case."); *Rah v. Terrance Cardinal Cooke Health Care Center*, 1:22-cv-03801-LLS (S.D.N.Y., Oct 5, 2022) (staying motion practice until resolution of appeals "which may affect whether this Court has subject matter jurisdiction in this case."); *Horton v. Bronx Harbor Health Care Complex, Inc. et al.*, 1:22-cv-06763-ER (S.D.N.Y. Sept. 20, 2022) (staying case pending resolution of *Leroy* and *Rivera-Zayas* appeals); *Cusimano v. Eastchester Rehabilitation and Health Center*, 1:22-cv-06453-DLC (S.D.N.Y., Aug. 29, 2022) (same); *Alston v. Harlem Center for Nursing and Rehabilitation, LLC, et al.*, 1:22-cv-06293-LAK-OTW (S.D.N.Y., Aug. 10, 2022) (same).

*See also Kasper v. Eger Health Care & Rehabilitation Center*, 1:22-cv-07187-DG-MMH (Dec. 22, 2022) (staying proceedings pending Second Circuit decisions, which are likely to be instructive);

*Johanna Carlino v. Eger Health Care & Rehabilitation Center*, 1:22-cv-07352-NRM-VMS (E.D.N.Y., Dec. 21, 2022) (staying proceedings pending Second Circuit decisions, which may be instructive on the jurisdictional questions posed); *Estate of George Karoutsos v. Catholic Health System of Long Island, Inc. et al*, 2:22-cv-05177-EK-SIL (E.D.N.Y., Nov. 29, 2022) (granting Defendant's motion for stay until such time as Second Circuit rules on pending appeals and Plaintiff is duly appointed Administrator of decedent's estate); *Bennett v. Forest Manor Care Center Inc.*, 2:22-cv-05285-ENV-ST (E.D.N.Y., Nov. 21, 2022) (holding motion practice in abeyance pending Second Circuit's resolution of appeals); *Jones v. The Brookdale University Hospital and Medical Center, et al.*, 1:22-cv-02552-RPK-TAM (E.D.N.Y., Nov. 9, 2022) (same); *Vetere v. Suffolk Restorative Therapy and Nursing LLC*, 2:22-cv-04886-FB-ARL (E.D.N.Y. Nov. 4, 2022) (same); *Huston v. Alliance Health Operations, LLC*, 1:22-cv-05085-DG-VMS (E.D.N.Y., Oct. 7, 2022) (ruling that decisions in *Leroy* and *Rivera-Zayas* are likely to be instructive in action); *Gillis v. Carmel Richmond Nursing Home, Inc.*, 1:22-cv-05690-KAM-TAM (E.D.N.Y., Oct. 4, 2022) (same); *Gonzalez v. Parker Jewish Institute for Health Care & Rehabilitation, et al.*, 2:22-cv-05199-AMD-ST (E.D.N.Y., Sep. 9, 2022); *Gavin v. Jackson Heights Care Center, LLC et al.*, 1:22-cv-05006-AMD-RER (E.D.N.Y., Sep. 7, 2022); *Kump v. Chapin Home For The Aging*, Case No. 1:22-cv-03189-DG-MMH (E.D.N.Y. July 19, 2022). (**See Stay Orders attached hereto**).

Defendant respectfully requests that this Court similarly stay motion practice and hold any consideration of remand in abeyance pending the Second Circuit's resolution of the novel jurisdictional questions at issue here. Defendant also requests that the time to answer or otherwise respond to the Complaint be extended until the foregoing issues are addressed by this Court.

We thank the Court in advance for its consideration of this matter.

Sincerely,

*Megan A. Lawless*

Megan A. Lawless (ML3227)  
([m.lawless@vbpnplaw.com](mailto:m.lawless@vbpnplaw.com))

TO: (via CM/ECF & e-mail)

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*Attorneys for Plaintiff*

Application DENIED without prejudice. Per the Undersigned's Individual Practices, any requests for adjournment of deadlines must indicate whether the other party consents to the request, and if not, the basis for their refusal to consent.

SO ORDERED.



Date: 1/6/2023

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE

## Megan Lawless

---

**From:** ecf\_bounces@nyed.uscourts.gov  
**Sent:** Thursday, September 29, 2022 9:48 AM  
**To:** nobody@nyed.uscourts.gov  
**Subject:** Activity in Case 2:22-cv-05558-ENV-ST McGovern v. Our Lady of Consolation Geriatric Care Center Order on Motion for Pre Motion Conference

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U.S. District Court

Eastern District of New York

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The following transaction was entered on 9/29/2022 at 9:47 AM EDT and filed on 9/29/2022

**Case Name:** McGovern v. Our Lady of Consolation Geriatric Care Center

**Case Number:** [2:22-cv-05558-ENV-ST](#)

**Filer:**

**Document Number:** No document attached

#### Docket Text:

**ORDER denying [5] Motion for Pre Motion Conference. Upon review of the parties' submissions at [5] and [6], the Court concludes the Second Circuit's resolution of Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al. (No. 21-2164), and Leroy v. Hume (Nos. 21-2158, 2159), will likely be instructive, if not dispositive, in this action. "[A] court may... properly exercise its staying power when a higher court is close to settling an important issue of law bearing on the action." Sikhs for Just. v. Nath, 893 F. Supp. 2d 598, 622 (S.D.N.Y. 2012). Accordingly, this case is stayed until further order of the Court. The parties are directed to file a joint status report within one week of the Second Circuit's decision in either case, or by January 13, 2023, whichever date is earlier. The defendant's request for a pre-motion conference is denied without prejudice to renewal. In addition, the deadline for the plaintiff to file a motion to remand is held in abeyance pending further order of the Court. Ordered by Judge Eric N. Vitaliano on 9/29/2022. (LoPresti, Joseph)**

**2:22-cv-05558-ENV-ST Notice has been electronically mailed to:**

Megan A. Lawless m.lawless@vbnpnlaw.com

Michael E. Duffy mduffy@duffyduffylaw.com

Dylan C. Braverman d.braverman@vbpnplaw.com, dylanbraverman@gmail.com

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**Subject:** Activity in Case 1:22-cv-10515-JGK Cruz v. St. Vincent de Paul Residence et al Order on Motion to Stay  
**Date:** Friday, December 23, 2022 6:45:22 PM

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**U.S. District Court**

**Southern District of New York**

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**Case Name:** Cruz v. St. Vincent de Paul Residence et al

**Case Number:** [1:22-cv-10515-JGK](#)

**Filer:**

**Document Number:** [9](#)

**Docket Text:**

**ORDER granting [6] Letter Motion to Stay re: [6] FIRST LETTER MOTION to Stay and to Hold Motion Practice in Abeyance** addressed to Judge John G. Koeltl from Megan A. Lawless dated December 18, 2022. **FIRST LETTER MOTION for Extension of Time to File Answer or Otherwise Respond to Complaint** addressed to Judge John G. Koeltl from Megan A. Lawless dated December 18, 2022. ; terminating [6] Letter Motion for Extension of Time to Answer re [6] **FIRST LETTER MOTION to Stay and to Hold Motion Practice in Abeyance** addressed to Judge John G. Koeltl from Megan A. Lawless dated December 18, 2022. **FIRST LETTER MOTION for Extension of Time to File Answer or Otherwise Respond to Complaint** addressed to Judge John G. Koeltl from Megan A. Lawless dated December 18, 2022. Therefore, this case is stayed pending the decisions by the Court of Appeals in those cases. The parties are directed to advise the Court promptly of any developments. The Clerk of the Court is directed to close Dkt. 6 in No. 22-cv-10515. SO ORDERED.. (Signed by Judge John G. Koeltl on 12/23/2022) (jca)

**1:22-cv-10515-JGK Notice has been electronically mailed to:**

Dylan C. Braverman [d.braverman@vbpnplaw.com](mailto:d.braverman@vbpnplaw.com), [dylanbraverman@gmail.com](mailto:dylanbraverman@gmail.com),  
[w.sidello@vbpnplaw.com](mailto:w.sidello@vbpnplaw.com)

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Megan Alice Lawless [m.lawless@vbpnplaw.com](mailto:m.lawless@vbpnplaw.com)

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[STAMP dcecfStamp\_ID=1008691343 [Date=12/23/2022] [FileNumber=28827290-0] [93d5fd19df19cec2f32e425ee10f5d2245fe92eb7d06158815f4eccee48595947a380e2c2dac9dfd0b4fd7925aafe1d54ea32ce702b70b2d1b4e5841c34c2689]]

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-07187-DG-MMH The Estate of Lenora Kasper, by her Proposed Administrator, Joe Kasper v. Eger Health Care & Rehabilitation Center et al Order on Motion for Pre Motion Conference  
**Date:** Thursday, December 22, 2022 3:18:29 PM

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**U.S. District Court**

**Eastern District of New York**

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**Case Name:** The Estate of Lenora Kasper, by her Proposed Administrator, Joe Kasper v. Eger Health Care & Rehabilitation Center et al

**Case Number:** [1:22-cv-07187-DG-MMH](#)

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**ORDER granting [5] -- Having considered the [5], [7], [8] parties' submissions, the Court concludes that a stay is appropriate. Motion practice is held in abeyance pending the Second Circuit's resolution of *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164) and *Leroy v. Hume* (Nos. 21-2158, 2159), as the decisions in those cases are likely to be instructive in this action. The parties are directed to file a joint status letter within one week of the Second Circuit's decision on either of the aforementioned appeals, or by February 1, 2023, whichever date is earlier. Further, the deadline for Plaintiff to file a motion to remand is held in abeyance. Ordered by Judge Diane Gujarati on 12/22/2022. (SS)**

**1:22-cv-07187-DG-MMH Notice has been electronically mailed to:**

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Nicole Varisco n.varisco@vbnpnlaw.com

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-07352-NRM-VMS Johanna Carlino v. Eger Health Care & Rehabilitation Center Order on Motion for Pre Motion Conference  
**Date:** Wednesday, December 21, 2022 4:08:42 PM

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U.S. District Court

Eastern District of New York

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**Case Name:** Johanna Carlino v. Eger Health Care & Rehabilitation Center

**Case Number:** [1:22-cv-07352-NRM-VMS](#)

**Filer:**

**Document Number:** No document attached

### Docket Text:

**ORDER staying proceedings--The Court concludes that a stay of proceedings is appropriate in this case. Motion practice is held in abeyance pending the Second Circuit's decisions in *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.*, No. 21-2164, and *Leroy v. Hume*, Nos. 21-2158 & 21-2159, which may be instructive on the jurisdictional questions posed in the instant litigation. In cases presenting similar issues, courts in this district have issued stays and denied parties' pre-motion conference requests pending the disposition of Leroy and Rivera-Zayas before the Second Circuit. See, e.g., No. 22-cv-05373, *Ottomano v. St. Johnland Nursing Center, Inc.*, November 7, 2022 Order (E.D.N.Y.); No. 22-cv-03189, *Kump v. Chapin Home for the Aging*, July 19, 2022 Order (E.D.N.Y.); No. 22-cv-05314, *Miller v. St. Johnland Nursing Center*, Nov. 24, 2022 Electronic Order (E.D.N.Y.). Defendant's [5] request for a pre-motion conference is **DENIED** without prejudice to renew. Further, the deadline for Plaintiff to file a motion to remand is held in abeyance. The parties shall submit a joint status report within one week of the Second Circuit's decision in either of the two aforementioned appeals, or by March 1, 2023, whichever date is earlier. Ordered by Judge Nina R. Morrison on 12/21/2022. (LK)**

1:22-cv-07352-NRM-VMS Notice has been electronically mailed to:

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Jennifer Marie Lobaito j.lobaito@vbpnplaw.com

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THE ESTATE OF SHIRLY BRITO, by her proposed  
administrator, Tairra Baker,

22 Civ. 9937 (PAE)

Plaintiff,

## ORDER

-V-

HARLEM CENTER FOR NURSING AND  
REHABILITATION, LLC,

Defendant.

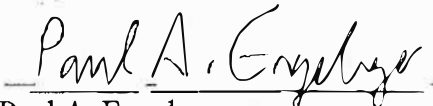
PAUL A. ENGELMAYER, District Judge:

On November 3, 2022, plaintiff Tairra Baker sued defendant Harlem Center for Nursing and Rehabilitation, LLC in the Supreme Court of the State of New York, in the County of New York, alleging that defendant's failures to safeguard against the spread of COVID-19 resulted in the death of her mother, Shirley Brito. On November 22, 2022, defendant filed a notice of removal. Dkt. 1. On November 29, 2022, defendant moved to stay the proceedings and motion practice regarding remand. Dkt. 5. On November 30, 2022, the Court instructed defendant to file proof of service forthwith and ordered plaintiff to respond within one week of service. Dkt. 6. On December 9, 2022, plaintiff responded. Dkt. 10.

After careful review of the parties' letters, Dkts. 5, 10, the Court follows the example of other in-circuit courts and stays this case in light of the Second Circuit's pending resolution of *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.), and *Rivera-Zayas v. Our Lady of Consolation and Geriatric Care Center*, No. 21-2164, which address issues central to this Court's jurisdiction. *See, e.g.*, Dkt. 5 at 2–3 (listing stays).

The Court adjourns the initial pre-trial conference scheduled for January 13, 2023, Dkt. 4, and orders the parties to file a joint status report within 48 hours of the Second Circuit's decision on the above appeals. The Clerk of the Court is respectfully directed to terminate the motion pending at docket 5.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: December 14, 2022  
New York, New York

**U.S. District Court  
Eastern District of New York (Central Islip)  
CIVIL DOCKET FOR CASE #: 2:22-cv-05285-ENV-ST**

Bennett v. Forest Manor Care Center Inc.  
Assigned to: Judge Eric N. Vitaliano  
Referred to: Magistrate Judge Steven Tiscione  
Case in other court: Supreme Court State of New York, Nassau  
County, 609412/2022  
Cause: 28:1441 Notice of Removal

Date Filed: 09/06/2022  
Jury Demand: Both  
Nature of Suit: 362 Personal Inj. Med.  
Malpractice  
Jurisdiction: Federal Question

**Plaintiff**

**Christine Bennett**  
*as Administratrix the Estate of Theresa  
Coraci, deceased*

represented by **Michael E. Duffy**  
Duffy & Duffy  
1370 RXR Plaza  
West Tower, 13th Flr.  
Uniondale, NY 11556  
516-394-4200  
Email: mduffy@duffyduffylaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Damien Smith**  
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1370 RXR Plaza  
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516-394-4200  
Email: dsmith@duffyduffylaw.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Forest Manor Care Center, Inc**  
*doing business as*  
Glen Cove Center for Nursing and  
Rehabilitation

represented by **Stuart J Manzione**  
Wagner Doman Leto & Di Leo, P.C.  
227 Mineola Boulevard  
Mineola, NY 11501  
516-742-1444  
Email: stum@wldlaw.com  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
09/06/2022	<a href="#"><u>1</u></a>	Civil Cover Sheet.. by Forest Manor Care Center Inc. (Manzione, Stuart) (Entered: 09/06/2022)
09/06/2022	<a href="#"><u>2</u></a>	NOTICE OF REMOVAL by Forest Manor Care Center Inc. ( Filing fee \$ 402 receipt number ANYEDC-15909653) Was the Disclosure Statement on Civil Cover Sheet

		completed -No (Attachments: # <a href="#">1</a> Exhibit Summons & Complaint, # <a href="#">2</a> Exhibit Email with SC, # <a href="#">3</a> Exhibit Order of 8-4-22, # <a href="#">4</a> Exhibit OSC 8-26-22, # <a href="#">5</a> Exhibit Rivera-Brief for Defendants-Appellants, # <a href="#">6</a> Exhibit Leroy-Brief Brookdale, # <a href="#">7</a> Exhibit Leroy-Brief Mt. Sinai, # <a href="#">8</a> Exhibit Leroy-2nd Circuit-Pltf Brief - Part 1, # <a href="#">9</a> Exhibit Leroy-2nd Circuit-Pltf Brief - Part 2, # <a href="#">10</a> Exhibit Martinez Brief, # <a href="#">11</a> Exhibit Leroy - Reply Brief obo Defendants, # <a href="#">12</a> Exhibit Leroy - Reply Brief obo Co-Def, # <a href="#">13</a> Exhibit Rivera-Zayas - Reply Brief, # <a href="#">14</a> Exhibit Amicus Briefs pending before Second Circuit, # <a href="#">15</a> Exhibit Chamber of Commerce AMA Amicus Brief, # <a href="#">16</a> Exhibit Motion to File Amicus Curiae Brief & Proposed Amicus Brief, # <a href="#">17</a> Exhibit U.S. Statement of Interest, # <a href="#">18</a> Affidavit of Service Affirmation of Service) (Manziona, Stuart) Modified on 9/7/2022 (Jakubowski, Laura). (Entered: 09/06/2022)
09/07/2022	<a href="#">3</a>	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made. (Jakubowski, Laura) (Entered: 09/07/2022)
09/07/2022		Case Assigned to Judge Eric N. Vitaliano and Magistrate Judge Steven Tiscione. Please download and review the Individual Practices of the assigned Judges, located on our <a href="#">website</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Jakubowski, Laura) (Entered: 09/07/2022)
09/07/2022	<a href="#">4</a>	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <b>if</b> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically <b>only if all</b> parties wish to consent. The form may also be accessed at the following link: <a href="http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf">http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf</a> . <b>You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent.</b> (Jakubowski, Laura) (Entered: 09/07/2022)
09/12/2022	<a href="#">5</a>	NOTICE of Appearance by Damien Smith on behalf of All Plaintiffs (aty to be noticed) (Smith, Damien) (Entered: 09/12/2022)
10/25/2022	<a href="#">6</a>	MOTION for Extension of Time to File Answer by Forest Manor Care Center, Inc. (Attachments: # <a href="#">1</a> Exhibit Exhibits to Letter Requesting Extension of Time to Answer) (Manziona, Stuart) (Entered: 10/25/2022)
10/27/2022	<a href="#">7</a>	RESPONSE to Motion re <a href="#">6</a> MOTION for Extension of Time to File Answer filed by All Plaintiffs. (Attachments: # <a href="#">1</a> Exhibit Exhibit A, Judge Seibel Order, # <a href="#">2</a> Exhibit Exhibit B, Judge Ross Order, # <a href="#">3</a> Exhibit Exhibit C, Judge Garaufis Order, # <a href="#">4</a> Exhibit Exhibit D, Shapnik v. Hebrew Riverdale, # <a href="#">5</a> Exhibit Exhibit E, Dupervil v. Alliance Health Operations, LCC, # <a href="#">6</a> Exhibit Exhibit F, Leroy v. Hume, # <a href="#">7</a> Exhibit Exhibit G, Judge Browns Remand Order) (Smith, Damien) (Entered: 10/27/2022)
11/21/2022		ORDER: On review of the parties' submissions <a href="#">6</a> <a href="#">7</a> , the Court imposes a brief stay and will hold the motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al. (No. 21-2164); Leroy v. Hume (Nos. 21-2158, 2159). The parties shall file a joint status report within one week of the Second Circuit's decisions in these appeals. Accordingly, the defendant's request to file a pre-answer motion to dismiss based on plaintiff's lack of capacity to prosecute this action is denied with leave to renew. Ordered by Judge Eric N. Vitaliano on 11/21/2022. (EK) (Entered: 11/21/2022)



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**CIVIL CONFERENCE  
MINUTE ORDER**

BEFORE: STEVEN I. LOCKE  
U.S. MAGISTRATE JUDGE

DATE: 11/29/22  
TIME: 2:00 pm

**CASE: CV 22-5177(EK) The Estate of George Karoutsos v. Catholic Health System of Long Island, Inc. et al**

TYPE OF CONFERENCE: INITIAL

FTR:

**APPEARANCES:**

For Plaintiff: Joseph Ciaccio

For Defendant: Megan Lawless

**THE FOLLOWING RULINGS WERE MADE:**

- ☐ Scheduling Order entered.
- ☐ The court has adopted and So Ordered the joint proposed scheduling order [ ] submitted by the parties.
- ☐ The Joint Pretrial Order is accepted for filing and the action is deemed ready for trial. The action will be tried in accordance with the discretion and the trial calendar of the District Judge.
- ☒ Other: Oral argument held. For the reasons set forth on the record, Defendant's motion for a stay, DE [5], is granted until such time as the Second Circuit rules on the pending appeals and Plaintiff is duly appointed Administrator of the decedent's estate. After both occur the parties are directed to advise the Court accordingly via ECF and provide an update on the status of the case and request a status conference

SO ORDERED

/s/Steven I. Locke  
STEVEN I. LOCKE  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ESTATE OF VICTOR E. ORTIZ,  
Plaintiff,  
-against-  
BRONX HARBOR HEALTH CARE  
COMPLEX, INC., *et al.*,  
Defendants.

1:22-cv-09348 (JLR)

**ORDER**

JENNIFER L. ROCHON, United States District Judge:

Defendant Bronx Harbor Health Care Complex, Inc. (“Bronx Harbor”) removed this action from the New York Supreme Court, County of Bronx, on November 1, 2022. ECF No. 1. On November 3, 2022, Defendant filed a Letter-Motion requesting the Court “hold anticipated motion practice and/or consideration of remand in abeyance until after the appeals of *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.) and *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164, currently pending in the Second Circuit, are decided.” ECF No. 5. Plaintiff has not appeared in this federal action or otherwise responded to Defendant Bronx Harbor’s Letter-Motion.

The Court finds sufficient cause to stay this action pending decision(s) by the U.S. Court of Appeals for the Second Circuit in *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.) and *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164 (together, the “Second Circuit Cases”), which may bear on whether this Court has subject-matter jurisdiction over this case.

Accordingly, IT IS HEREBY ORDERED that this action is stayed pending disposition of the Second Circuit Cases.

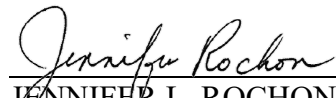
IT IS FURTHER ORDERED that Defendant Bronx Harbor shall, by **November 11, 2022**,

serve this Order, the Letter-Motion, and the Notice of Removal (including all attachments) on all parties in this action and file proof of service on ECF within three business days.

IT IS FURTHER ORDERED that the parties shall, **within one week** of the disposition of the Second Circuit Cases, file a joint letter indicating the decision(s)'s bearing on this case and proposing next steps.

Dated: November 8, 2022  
New York, New York

SO ORDERED.

  
\_\_\_\_\_  
JENNIFER L. ROCHON  
United States District Judge

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 2:22-cv-04886-FB-ARL Vetere v. Suffolk Restorative Therapy and Nursing LLC Pre Motion Conference  
**Date:** Friday, November 4, 2022 4:31:32 PM

---

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**U.S. District Court**

**Eastern District of New York**

### **Notice of Electronic Filing**

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**Case Name:** Vetere v. Suffolk Restorative Therapy and Nursing LLC

**Case Number:** [2:22-cv-04886-FB-ARL](#)

**Filer:**

**Document Number:** No document attached

#### **Docket Text:**

**Minute Entry for proceedings held before Judge Frederic Block: Jonathan Panarella, Esq. for the plaintiff and Megan Lawless, Esq. for the defendants, all present. Pre-motion conference held on 11/4/2022. Defendants anticipated motion to dismiss or stay the case until a decision is issued by Second Circuit as to a related case were discussed. Counsel have agreed to hold off on any motion practice until the Second Circuit issues a decision in a similar related case. After the Second Circuit has issued their decision, if the defendant still wishes to pursue their motion to dismiss, they will file another letter application for a pre-motion conference. (Court Reporter: Not Reported) (MI)**

**2:22-cv-04886-FB-ARL Notice has been electronically mailed to:**

Megan A. Lawless    [m.lawless@vbpnplaw.com](mailto:m.lawless@vbpnplaw.com)

Jeffrey Alan Guzman    [jguzman@kglawteam.com](mailto:jguzman@kglawteam.com)

Dylan C. Braverman    [d.braverman@vbpnplaw.com](mailto:d.braverman@vbpnplaw.com), [dylanbraverman@gmail.com](mailto:dylanbraverman@gmail.com)

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-02552-RPK-TAM Jones v. The Brookdale University Hospital and Medical Center et al Pre Motion Conference  
**Date:** Wednesday, November 9, 2022 3:02:26 PM

---

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U.S. District Court

Eastern District of New York

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The following transaction was entered on 11/9/2022 at 3:00 PM EST and filed on 11/9/2022

**Case Name:** Jones v. The Brookdale University Hospital and Medical Center et al

**Case Number:** [1:22-cv-02552-RPK-TAM](#)

**Filer:**

**Document Number:** No document attached

### Docket Text:

**MINUTE ENTRY AND ORDER:** A pre-motion conference was held by telephone before Judge Rachel P. Kovner on 11/9/2022. Nicholas Farnolo appeared on behalf of plaintiff. Megan Lawless appeared on behalf of defendant Brookdale University Hospital and Medical Center. Mark Laughlin appeared on behalf of defendant Brooklyn Queens Nursing Home, Inc. The parties discussed plaintiff's proposed motion to remand the case to state court and whether briefing on that motion should be held in abeyance pending the Second Circuit's decisions in Nos. 21-2158 and 21-2159, *Leroy v. Hume*, and No. 21-2164, *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*. Because the issues presented in those consolidated cases appear substantially similar to the issues presented in plaintiff's motion for remand, the Court will hold motions practice in abeyance pending the Second Circuit's decision in those cases. The parties are instructed to file a status report with the Court upon the handing down of such decision or by 2/9/2023, whichever is earlier. Ordered by Judge Rachel P. Kovner on 11/9/2022. (de Carvalho, Simon)

**1:22-cv-02552-RPK-TAM Notice has been electronically mailed to:**

Megan A. Lawless    [m.lawless@vbpnplaw.com](mailto:m.lawless@vbpnplaw.com)

Dylan C. Braverman d.braverman@vbpnlaw.com, dylanbraverman@gmail.com

Caitlin Anne Robin caitlin@robinandassociates.com, caitlinannerobin@gmail.com

Joseph Ciaccio jciaccio@napolilaw.com, hgriffith@napolilaw.com,  
josephlciaccio@gmail.com, nemanuele@napolilaw.com, wmendez@nsprlaw.com

Mark Laughlin mark@robinandassociates.com

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-05085-DG-VMS Huston v. Alliance Health Operations, LLC et al Order on Motion to Stay  
**Date:** Friday, October 7, 2022 11:36:48 AM

---

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U.S. District Court

Eastern District of New York

### Notice of Electronic Filing

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**Case Name:** Huston v. Alliance Health Operations, LLC et al

**Case Number:** [1:22-cv-05085-DG-VMS](#)

**Filer:**

**Document Number:** No document attached

### Docket Text:

**ORDER granting [5] First MOTION to Stay -- Having considered the [5] [7] [9] parties' submissions, the Court concludes that a stay is appropriate. Motion practice is held in abeyance pending the Second Circuit's resolution of *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164) and *Leroy v. Hume* (Nos. 21-2158, 2159), as the decisions in those cases are likely to be instructive in this action. The parties are directed to file a joint status letter within one week of the Second Circuit's decision on either of the aforementioned appeals, or by January 6, 2023, whichever date is earlier. Defendant's [5] requests for an extension of time to answer or otherwise respond to the Complaint and for leave to file a pre-answer motion to dismiss are denied without prejudice to renewal. Ordered by Judge Diane Gujarati on 10/7/2022. (KA)**

**1:22-cv-05085-DG-VMS Notice has been electronically mailed to:**

Megan A. Lawless [m.lawless@vbpnlaw.com](mailto:m.lawless@vbpnlaw.com)

Joseph Ciaccio [jciaccio@napolilaw.com](mailto:jciaccio@napolilaw.com), [hgriffith@napolilaw.com](mailto:hgriffith@napolilaw.com),  
[josephlciaccio@gmail.com](mailto:josephlciaccio@gmail.com), [nemanuele@napolilaw.com](mailto:nemanuele@napolilaw.com), [wmendez@nsprlaw.com](mailto:wmendez@nsprlaw.com)

Nicole Varisco [n.varisco@vbpnlaw.com](mailto:n.varisco@vbpnlaw.com)

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**To:** [CourtMail@nysd.uscourts.gov](mailto:CourtMail@nysd.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-03801-LLS Rah v. Terence Cardinal Cooke Health Care Center Order  
**Date:** Wednesday, October 5, 2022 4:29:05 PM

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**U.S. District Court**

**Southern District of New York**

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The following transaction was entered on 10/5/2022 at 4:27 PM EDT and filed on 10/5/2022

**Case Name:** Rah v. Terence Cardinal Cooke Health Care Center

**Case Number:** [1:22-cv-03801-LLS](#)

**Filer:**

**Document Number:** [10](#)

**Docket Text:**

**ORDER: Sufficient cause appearing, any proposed motion to dismiss or remand is stayed until the Second Circuit renders decisions in Leroy v. Hume, Nos. 21-2158, 21-2159 (cons.) and Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, 21-2164, which may affect whether this Court has subject matter jurisdiction in this case. The parties shall contact the Court within 14 days after the latter of the Second Circuit's decisions in Leroy and Rivera-Zayas, with their proposed briefing schedule. (Signed by Judge Louis L. Stanton on 10/5/2022) (rro)**

**1:22-cv-03801-LLS Notice has been electronically mailed to:**

Dylan C. Braverman [d.braverman@vbpnplaw.com](mailto:d.braverman@vbpnplaw.com), [dylanbraverman@gmail.com](mailto:dylanbraverman@gmail.com),  
[w.sidello@vbpnplaw.com](mailto:w.sidello@vbpnplaw.com)

Nicole Zippilli [n.varisco@vbpnplaw.com](mailto:n.varisco@vbpnplaw.com), [nicole.varisco@lawbbh.com](mailto:nicole.varisco@lawbbh.com)

Megan Alice Lawless [m.lawless@vbpnplaw.com](mailto:m.lawless@vbpnplaw.com)

Brett Kanter [bkanter@rawle.com](mailto:bkanter@rawle.com)

Jeffrey A. Guzman [jguzman@kglawteam.com](mailto:jguzman@kglawteam.com)

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**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1008691343 [Date=10/5/2022] [FileNumber=28418757-0] [3d2648319691c90be505f38afe956df11994493537a9408e5e9c297fefa3fe2adb23177fa976810d65de1ef69f839378fa82f0f9c54cd5950b5e8bb600fa6c84]]

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## Megan Lawless

---

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**Sent:** Tuesday, October 4, 2022 10:41 AM  
**To:** nobody@nyed.uscourts.gov  
**Subject:** Activity in Case 1:22-cv-05690-KAM-TAM Gillis v. Carmel Richmond Nursing Home, Inc. et al Order on Motion for Extension of Time to Answer

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U.S. District Court

Eastern District of New York

### Notice of Electronic Filing

The following transaction was entered on 10/4/2022 at 10:40 AM EDT and filed on 10/4/2022

**Case Name:** Gillis v. Carmel Richmond Nursing Home, Inc. et al

**Case Number:** [1:22-cv-05690-KAM-TAM](#)

**Filer:**

**Document Number:** No document attached

#### Docket Text:

**ORDER terminating [6] Motion for Extension of Time to Answer and MOTION to DISMISS. On review of the Defendant's submission [6], the Court imposes a brief stay and will hold motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or by October 31, 2022, whichever date is earlier. Defendant's [6] request for a pre-motion conference for an anticipated motion to dismiss is denied without prejudice for renewal. Further, the deadline for Plaintiff to file a motion to remand is held in abeyance. Ordered by Judge Kiyo A. Matsumoto on 10/4/2022. (LW)**

**1:22-cv-05690-KAM-TAM Notice has been electronically mailed to:**

Megan A. Lawless m.lawless@vbpnplaw.com

Dylan C. Braverman d.braverman@vbpnplaw.com, dylanbraverman@gmail.com

Joseph Ciaccio jciaccio@napolilaw.com, hgriffith@napolilaw.com, josephlciaccio@gmail.com,  
nemanuele@napolilaw.com, wmendez@nsprlaw.com

Nicole Varisco n.varisco@vbnpnlaw.com

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## Megan Lawless

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**Sent:** Tuesday, September 20, 2022 6:11 PM  
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**Subject:** Activity in Case 1:22-cv-06763-ER Horton v. Bronx Harbor Health Care Complex, Inc. et al Order Staying Case

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U.S. District Court

Southern District of New York

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The following transaction was entered on 9/20/2022 at 6:11 PM EDT and filed on 9/20/2022

**Case Name:** Horton v. Bronx Harbor Health Care Complex, Inc. et al

**Case Number:** [1:22-cv-06763-ER](#)

**Filer:**

**Document Number:** [9](#)

### Docket Text:

**ORDER: On April 13, 2022, Andre Horton brought this action in the Supreme Court of the State of New York, County of Bronx, alleging that the negligence of Bronx Harbor Health Care Complex, Inc. ("Bronx Harbor") in safeguarding against the spread of COVID-19 resulted in the death of his mother, Virginia Horton. Bronx Harbor removed the case to this Court on August 9, 2022. Doc. 1. For the reasons set forth during the pre-motion conference held on September 20, 2022, this case is stayed pending the Second Circuit's resolution of Leroy v. Hume, Nos. 21-2158, 21-2159 (cons.), and Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, No. 21-2164. The parties are instructed to file a joint status report within 48 hours of the Second Circuits decision on those appeals. IT IS SO ORDERED. (Signed by Judge Edgardo Ramos on 9/20/2022) (ama)**

### 1:22-cv-06763-ER Notice has been electronically mailed to:

Dylan C. Braverman d.braverman@vbnpnlaw.com, dylanbraverman@gmail.com, w.sidello@vbnpnlaw.com

Joseph Ciaccio jciaccio@napolilaw.com, hgriffith@napolilaw.com

Megan Alice Lawless m.lawless@vbnpnlaw.com

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**Original filename:**n/a

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[STAMP dcecfStamp\_ID=1008691343 [Date=9/20/2022] [FileNumber=28338935-0] [21a2f5099911e138d5c7e74e3931b9ffd3daea7077c2536fb13b646c7f55fb0476da1f62990f4c754621dd2f0cd7c2a08f18f835227fb891718d8221b66feee3]]

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 2:22-cv-05199-AMD-ST Gonzalez v. Parker Jewish Institute for Health Care & Rehabilitation et al  
Order on Motion for Pre Motion Conference  
**Date:** Friday, September 9, 2022 5:54:43 PM

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U.S. District Court

Eastern District of New York

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**Case Name:** Gonzalez v. Parker Jewish Institute for Health Care & Rehabilitation et al  
**Case Number:** [2:22-cv-05199-AMD-ST](#)  
**Filer:**  
**Document Number:** No document attached

### Docket Text:

**ORDER denying [4] Motion for Pre Motion Conference:** On review of the parties' submissions [4] [5], the Court imposes a brief stay and will hold motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or by October 31, 2022, whichever date is earlier. The defendant's request for a pre-motion conference is denied without prejudice to renewal. In addition, the deadline for the plaintiff to file a motion to remand is being held in abeyance. Ordered by Judge Ann M. Donnelly on 9/9/2022. (Gianotti, Claire)

**2:22-cv-05199-AMD-ST Notice has been electronically mailed to:**

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Joseph Ciacchio jciaccio@napolilaw.com, hgriffith@napolilaw.com,  
josephlciaccio@gmail.com, nemanuele@napolilaw.com, wmendez@nsprlaw.com

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**To:** [Megan Lawless](#)  
**Subject:** Activity in Case 1:22-cv-05006-AMD-RER Gavin v. Jackson Heights Care Center, LLC et al Order on Motion to Stay  
**Date:** Wednesday, September 7, 2022 1:58:54 PM

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**U.S. District Court**

**Eastern District of New York**

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**Case Name:** Gavin v. Jackson Heights Care Center, LLC et al

**Case Number:** [1:22-cv-05006-AMD-RER](#)

**Filer:**

**Document Number:** No document attached

### **Docket Text:**

**ORDER.** The defendant's [4] [5] Motion to Stay is granted. The case is stayed, and motion practice is held in abeyance, pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or November 30, 2022, whichever date is earlier. Ordered by Judge Ann M. Donnelly on 9/7/2022. (Jones, Jenna)

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Joseph Ciaccio [jciaccio@napolilaw.com](mailto:jciaccio@napolilaw.com), [hgriffith@napolilaw.com](mailto:hgriffith@napolilaw.com), [josephciaccio@gmail.com](mailto:josephciaccio@gmail.com),  
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Nicole Varisco [n.varisco@vbpnplaw.com](mailto:n.varisco@vbpnplaw.com)

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## Megan Lawless

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**Subject:** Activity in Case 1:22-cv-04678-AMD-VMS Loggia v. Carmel Richmond Nursing Home, Inc. Order on Motion for Pre Motion Conference

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U.S. District Court

Eastern District of New York

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The following transaction was entered on 8/24/2022 at 7:02 PM EDT and filed on 8/24/2022

**Case Name:** Loggia v. Carmel Richmond Nursing Home, Inc.

**Case Number:** [1:22-cv-04678-AMD-VMS](#)

**Filer:**

**Document Number:** No document attached

#### Docket Text:

**ORDER denying [10] motion to remand to state court without prejudice to renewal. On review of the parties' submissions [7] [8], the Court imposes a brief stay and will hold motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or by October 31, 2022, whichever date is earlier. The deadline for the plaintiff to file a motion to remand is being held in abeyance. The plaintiffs are reminded that they must request a pre-motion conference before filing any such motion. The defendant's request for a pre-motion conference [7] is denied as moot without prejudice to renewal. Ordered by Judge Ann M. Donnelly on 8/24/2022. (Gianotti, Claire)**

**1:22-cv-04678-AMD-VMS Notice has been electronically mailed to:**

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Jeffrey Alan Guzman jguzman@kglawteam.com

Dylan C. Braverman d.braverman@vbpnplaw.com, dylanbraverman@gmail.com

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
JOSEPH CUSIMANO, as Administrator of	:	
the Estate of CLARA CUSIMANO,	:	
	:	
Plaintiff,	:	
	:	22cv6453 (DLC)
-v-	:	
	:	<u>ORDER</u>
EASTCHESTER REHABILITATION AND HEALTH	:	
CENTER,	:	
	:	
Defendant.	:	
	:	
-----	X	

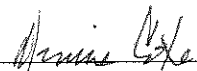
DENISE COTE, District Judge:

On August 3, 2022, the defendant moved to stay this action pending the resolution of two cases before the U.S Court of the Appeals for the Second Circuit. On August 8, the defendant filed a brief in support of their motion. On August 11, the plaintiff filed an opposition. Accordingly, it is hereby

ORDERED that the defendant's motion to stay this action is granted. This action is stayed pending the resolution of Rivera-Zayas v. Our Lady of Consolation, No. 21-2164 and Leroy v. Hume, Nos. 21-2158, 21-2159 before the U.S. Court of Appeals for the Second Circuit.

IT IS FURTHER ORDERED that within a week of the disposition from the Second Circuit, the parties shall submit a joint letter indicating the decision's bearing on this case.

Dated: New York, New York  
August 29, 2022

  
\_\_\_\_\_  
DENISE COTE  
United States District Judge

## Megan Lawless

---

**From:** Megan Lawless  
**Sent:** Monday, October 10, 2022 10:20 AM  
**To:** Megan Lawless  
**Subject:** Activity in Case 1:22-cv-04555-AMD-SJB Thompson v. Ditmas Park Rehabilitation & Care Center, LLC et al Order on Motion for Extension of Time to Answer

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**Sent:** Thursday, August 11, 2022 6:18 PM  
**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-04555-AMD-SJB Thompson v. Ditmas Park Rehabilitation & Care Center, LLC et al Order on Motion for Extension of Time to Answer

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U.S. District Court

Eastern District of New York

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**Case Name:** Thompson v. Ditmas Park Rehabilitation & Care Center, LLC et al  
**Case Number:** [1:22-cv-04555-AMD-SJB](#)  
**Filer:**  
**Document Number:** No document attached

### Docket Text:

**ORDER:** Defendants' motion to stay [4] is granted. On review of the parties' submissions [4] [5], the Court imposes a brief stay and will hold motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or by October 31, 2022, whichever date is earlier. The Defendants' motions for an extension of time to answer the Complaint and for leave to file a motion to dismiss are denied without prejudice to renewal after the Second Circuit's decisions in the appeals. In addition, the deadline for the plaintiff to file a motion to remand is being held in abeyance. So Ordered by Magistrate Judge Sanket J. Bulsara on 8/11/2022. (Dickers, Maxwell)

**1:22-cv-04555-AMD-SJB Notice has been electronically mailed to:**

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[nemanuele@napolilaw.com](mailto:nemanuele@napolilaw.com), [wmendez@nsprlaw.com](mailto:wmendez@nsprlaw.com)

Nicole Varisco [n.varisco@vbpnlaw.com](mailto:n.varisco@vbpnlaw.com)

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**Date:** Thursday, August 11, 2022 10:17:05 AM

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**U.S. District Court**

**Eastern District of New York**

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**Case Name:** Berlin v. SGRNC LLC et al  
**Case Number:** [1:22-cv-04567-WFK-TAM](#)  
**Filer:**  
**Document Number:** No document attached

#### **Docket Text:**

**ORDER granting [4] Motion to Stay; granting [4] Motion for Extension of Time to Answer re [4] Letter MOTION to Stay *Action*Letter MOTION for Extension of Time to File Answer Letter MOTION for Leave to File Document *Motion to Dismiss All Parties.*; granting [4] Motion for Leave to File. So Ordered by Judge William F. Kuntz, II on 8/10/2022. (Kuntz, William)**

**1:22-cv-04567-WFK-TAM Notice has been electronically mailed to:**

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## Megan Lawless

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**From:** Megan Lawless  
**Sent:** Tuesday, August 23, 2022 7:18 PM  
**To:** Megan Lawless  
**Subject:** Activity in Case 1:22-cv-04567-WFK-TAM Berlin v. SGRNC LLC et al Order on Motion for Reconsideration

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U.S. District Court

Eastern District of New York

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**Case Name:** Berlin v. SGRNC LLC et al  
**Case Number:** [1:22-cv-04567-WFK-TAM](#)  
**Filer:**  
**Document Number:** No document attached

### Docket Text:

**ORDER denying [5] Motion for Reconsideration re [5] MOTION for Reconsideration re Order on Motion to Stay,, Order on Motion for Extension of Time to Answer,, Order on Motion for Leave to File, filed by Michael Berlin, [6] Response in Opposition to Motion, filed by SGRNC LLC. So Ordered by Judge William F. Kuntz, II on 8/11/2022. (Kuntz, William)**

**1:22-cv-04567-WFK-TAM Notice has been electronically mailed to:**

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[nemanuele@napolilaw.com](mailto:nemanuele@napolilaw.com), [wmendez@nsprlaw.com](mailto:wmendez@nsprlaw.com)

Nicole Varisco [n.varisco@vbpnplaw.com](mailto:n.varisco@vbpnplaw.com)

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\* Also Admitted to Practice in NJ  
\*\* Also Admitted to Practice in CT  
\*\*\* Also Admitted to Practice in NJ, CT, DC  
- Admitted to Practice in Florida  
■ Also Admitted to Practice in FL  
± Also Admitted to Practice in NJ and PA  
Δ Also Admitted to Practice in MA  
:: Admitted to Practice in Ohio  
† Admission Pending

August 1, 2022

## VIA CM/ECF

Judge Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl St.  
New York, NY 10007-1312

**MEMO ENDORSED.**

Re: *Alston v. Harlem Center for Nursing and Rehabilitation, LLC, et al.*  
Case No. 1:22-cv-06293

Dear Judge Kaplan:

The undersigned represents defendants Harlem Center for Nursing and Rehabilitation, LLC, Greater Harlem Home and Rehabilitation Center, Inc. and the Allure Group (“Defendants”) in the above-referenced action. This letter is submitted to request an extension of time to answer and for a briefing schedule allowing Defendants to file a motion to dismiss for the reasons stated below. Also, in the event plaintiff seeks remand, Defendants request that such application be held in abeyance until after the Second Circuit issues its decisions in the appeals *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.) and *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164 because they concern the issue of subject matter jurisdiction.

First, it should be noted that plaintiff lacks standing to pursue this claim. Plaintiff Mark Alston files this action as a “Proposed Administrator of the Estate of Henrietta Alston.” It is well settled that a “Proposed” estate representative lacks standing, and a case must be dismissed on those grounds. Defendants intend to make a motion to dismiss on this basis if the Court will grant a briefing schedule for same. *See* NY ETPL §5-4.1(1); *Bush v. City of Utica*, 948 F. Supp. 2d 246, 253 (N.D.N.Y. 2013), *aff’d* *Bush v. City of Utica*, N.Y., 558 F. App’x 131 (2d Cir. 2014).

Defendants further intend to move for dismissal under Fed. R. Civ. P. §§ 12(b)(1) and 12(b)(6), on the basis that the Public Readiness and Emergency Preparedness Act (“PREP Act”), 42 U.S.C. § 247d-6d and 42 U.S.C. § 247d-6e, and New York’s Emergency or Disaster Treatment Protection Act (“EDTPA”), N.Y. Pub. Health Law § 3082, provide immunity from suit and liability to Defendants for the claims asserted in the Complaint. Plaintiff’s claims arise out of and relate to the administration of covered countermeasures, as defined by the PREP Act, to prevent, diagnose and treat COVID-19. As such, it is respectfully submitted that the immunity provisions of the PREP Act bar suit for the claimed injuries, requiring dismissal of the Complaint.

Plaintiff's claims are also barred by New York's EDTPA, which mandates dismissal of any claim involving care that was impacted by acts or decisions by healthcare providers and facilities in response to the COVID-19 pandemic. Plaintiff alleges injury resulting from the provision of health care services pursuant to a COVID-19 emergency rule, and the patient's care and treatment were impacted by Defendant's decisions and activities in response to the COVID-19 outbreak. The entire premise of the Complaint is a critique of Defendants' activities and decisions in response to or as a result of the COVID-19 outbreak, thereby triggering the immunity conferred by the EDTPA and thus requiring dismissal.

Defendants removed this action on the basis that Plaintiff's claims: (1) "aris[e] under" federal law within the meaning of 28 U.S.C. § 1331 because they are completely preempted by the PREP Act; (2) "aris[e] under" federal law within the meaning of 28 U.S.C. § 1331 because, under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), these claims necessarily involve substantial and disputed questions of federal law; and (3) form the basis for federal jurisdiction because defendants subject to such claims are persons acting under federal officers within the meaning of 28 U.S.C. § 1442(a)(1).

Defendants anticipate that Plaintiff will move to remand this action to state court. The legal bases for Defendants' assertion of subject matter jurisdiction are currently before the United States Court of Appeals for the Second Circuit in *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.) and *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164, with briefing complete in both appeals and the parties awaiting oral argument. As such, Defendants respectfully ask this Court to hold any consideration of remand in abeyance until after the Second Circuit renders a decision in *Rivera-Zayas* and *Leroy* on these novel, first-impression issues of federal jurisdiction.

A number of courts, including this Court, the Second Circuit, and the Southern District of New York, have held briefing of these issues in abeyance pending the resolution of these appeals. *See Walker v. Richmond University Medical Center*, Case Nos. 22-206, 22-269 (con.) (2d Cir.) (holding briefing of appeal of remand order in abeyance pending determinations of identical first-impression legal issues in *Leroy* and *Rivera-Zayas*); *Kump v. Chapin Home For The Aging*, Case No. 1:22-cv-03189-DG-MMH (E.D.N.Y. July 19, 2022) (holding motion practice in abeyance pending Second Circuit's resolution of *Rivera-Zayas* and *Leroy* which are "likely to be instructive in this action"); *Weppeler v. Highfield Gardens Care Center of Great Neck*, Case No. 2:22-cv-02905-AMD-CLP (E.D.N.Y. June 3, 2022) (same); *Jenkins v. Dewitt Rehabilitation and Nursing Center, Inc. et al.*, 1:22-cv-05985-PAE (S.D.N.Y. July 15, 2022) (staying case pending Second Circuit's resolution of jurisdictional question at issue); *Mitchell, et al. v. Parkview Operating Co. LLC, et al.*, Case No.: 7:22-cv-02357-NSR (S.D.N.Y., April 25, 2022); *Wegenaar v. Our Lady of Consolation Geriatric Care Center, et al.*, Case No.: 2:22-cv-02334-JS-ST (E.D.N.Y., May 24, 2022). (Orders attached hereto).

In conclusion, it is respectfully requested that the Court extend the time for Defendants to answer and set a briefing schedule for its motion to dismiss. Alternatively, if plaintiff requests remand, we then ask the Court to stay the action pending the decision of the *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.) and *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164 appeals. We thank the Court for its consideration of this request.

Sincerely,

*Nicole M. Varisco*

Nicole Varisco (NZ2525)

([n.varisco@vbnpnlaw.com](mailto:n.varisco@vbnpnlaw.com))

Cc: via CM/ECF and e-mail  
NAPOLI SHKOLNIK, PLLC  
Joseph Ciaccio  
*Attorneys for Plaintiff*  
[JCiaccio@NapoliLaw.com](mailto:JCiaccio@NapoliLaw.com)

Plaintiff asks the Court to set a briefing schedule for his anticipated motion to remand this action back to state court. See ECF 8. Having considered the parties' submissions, the Court concludes that a stay is appropriate. Accordingly, Defendant's request to stay the case is **GRANTED**.

This case is stayed pending the Second Circuit's resolution of the subject matter questions at issue here. The parties are directed to file a joint status letter within one week of a disposition from the Second Circuit, indicating the decision's bearing on this case. The Initial Case Management Conference scheduled for October 11, 2022 is adjourned *sine die*.

**SO ORDERED.**



Ona T. Wang  
U.S.M.J.

8/10/22

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**Subject:** Activity in Case 2:22-cv-02905-AMD-CLP Wepler v. Highfield Gardens Care Center of Great Neck Order on Motion for Pre Motion Conference  
**Date:** Friday, June 3, 2022 3:43:15 PM

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U.S. District Court

Eastern District of New York

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The following transaction was entered on 6/3/2022 at 3:42 PM EDT and filed on 6/3/2022

**Case Name:** Wepler v. Highfield Gardens Care Center of Great Neck

**Case Number:** [2:22-cv-02905-AMD-CLP](#)

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#### Docket Text:

**ORDER denying [5] motion for a pre-motion conference. On review of the parties' submissions [5] [10], the Court imposes a brief stay and will hold motion practice in abeyance pending the Second Circuit's resolution of two cases that are likely to be instructive in this action. See *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164); *Leroy v. Hume* (Nos. 21-2158, 2159). The parties must file a joint status report within one week of the Second Circuit's decisions in these appeals, or by October 31, 2022, whichever date is earlier. The defendant's request for a pre-motion conference is denied without prejudice to renewal. In addition, the deadline for the plaintiff to file a motion to remand is being held in abeyance. Ordered by Judge Ann M. Donnelly on 6/3/2022. (Baer, Nicholas)**

**2:22-cv-02905-AMD-CLP Notice has been electronically mailed to:**

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**Subject:** Activity in Case 1:22-cv-03189-DG-MMH Kump v. Chapin Home For The Aging Order on Motion for Pre Motion Conference  
**Date:** Tuesday, July 19, 2022 9:43:34 AM

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U.S. District Court

Eastern District of New York

### Notice of Electronic Filing

The following transaction was entered on 7/19/2022 at 9:42 AM EDT and filed on 7/19/2022

**Case Name:** Kump v. Chapin Home For The Aging

**Case Number:** [1:22-cv-03189-DG-MMH](#)

**Filer:**

**Document Number:** No document attached

#### Docket Text:

**ORDER denying [5] Motion for Pre Motion Conference -- Having considered the [5], [6], [7], [8], [9], [10] parties' submissions, the Court concludes that a stay is appropriate. Motion practice is held in abeyance pending the Second Circuit's resolution of *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center, et al.* (No. 21-2164) and *Leroy v. Hume* (Nos. 21-2158, 2159), as the decisions in those cases are likely to be instructive in this action. The parties are directed to file a joint status letter within one week of the Second Circuit's decision on either of the aforementioned appeals, or by October 31, 2022, whichever date is earlier. Defendant's [5] request for a pre-motion conference is denied without prejudice to renewal. Further, the deadline for Plaintiff to file a motion to remand is held in abeyance. Ordered by Judge Diane Gujarati on 7/19/2022. (Almonte, Kelly)**

**1:22-cv-03189-DG-MMH Notice has been electronically mailed to:**

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